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**SECRETARY, BOARD OF
OIL, GAS & MINING**

**BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH**

UTAH CHAPTER OF THE SIERRA CLUB,
et al, Petitioners,

vs.

UTAH DIVISION OF OIL, GAS & MINING,
Respondents,

ALTON COAL DEVELOPMENT, LLC, and
KANE COUNTY, UTAH

Respondent/Intervenors.

**PERMITTEE'S OBJECTIONS TO
PETITIONERS' OFFER OF RULE
30(b)(6) DEPOSITION TESTIMONY**

Docket No. 2009-019

Cause No. C/025/0005

Alton Coal Development, LLC ("Alton," "ACD" or "Permittee"), the Permittee of Mine Permit No. C/025/0005 ("Permit"), through its attorneys joins in the Division's objection filed today and submits its additional objections to Petitioners' Offer of Rule 30(b)(6) Deposition Testimony Into Evidence.

As set forth in memoranda filed by Alton opposing Petitioners' previous motions to admit Rule 30(b)(6) depositions, the Board should not admit deposition testimony as a substitute for live testimony presented at hearing on the same issues offered by the same witnesses.¹

Petitioners have listed eight excerpts from the deposition testimony presented by the Division of Oil, Gas and Mining. This testimony addresses the same issues that have either been addressed in live testimony at hearing on April 30, 2010, or regarding issues scheduled to be addressed at the hearing on May 21-22, 2010. Therefore, the deposition testimony is redundant and should be excluded. The Utah Administrative Procedures Act ("UAPA"), the Utah Rules of Evidence, and the Board's rules authorize the Board to exclude such repetitious evidence. Utah Code § 63G-4-206 (1)(b)(i); R 641-108-201; Utah R. Evid. 403.

In the alternative, should the Board admit the deposition testimony offered by Petitioners, Alton requests that the following excerpts be admitted to clarify the record:

1. Volume I, add pp. 88-91 (testimony regarding other surface coal mines in Utah);
2. Volume I, add p. 95 (additional testimony concerning the Dakota Formation);
3. Volume I, add pp. 173-181 (additional testimony on the Division's use of and reliance on OSM guidelines.)
4. Volume II, add entire volume (additional testimony on the alluvial valley floor issue.)

In addition, Alton objects to admission of testimony at Volume I, pages 100-106 and the referenced Exhibit 8 due to lack of foundation. This objection was raised by Mr. Alder and never adequately addressed by Petitioners. Vol. 1 at 101. Ms. Dragoo further objected to the admission of Exhibit 8 which related to the Division's findings regarding a different Alton Coal Project from the current Coal Hollow Mine Project. Vol. 1 at 103.

In summary, Alton objects to the admission of the deposition testimony identified by Petitioners. In the alternative, should the deposition testimony be admitted, Permittee requests

¹ Permittee's Opposition to Petitioners' Motion for Introduction of Deposition Transcripts, filed May 11, 2010; Permittee's Second Memorandum in Opposition, filed May 17, 2010.

that the entire discussion regarding the issue be added to the record including those pages designated above.

Further Alton requests the Board to consider Alton's objections regarding the relevance of the testimony and decline to accept the objectionable testimony into the record.

Respectfully submitted this 20th day of May, 2010.



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CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of May, 2010, I e-mailed a true and correct pdf copy of the foregoing **PERMITTEE'S OBJECTIONS TO PETITIONERS' OFFER OF RULE 30(b)(6) DEPOSITION TESTIMONY** to the following:

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